

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHERYL LONG and BOBBY LONG,	:	CIVIL ACTION
Plaintiffs,	:	
	:	
v.	:	
	:	
MICHAEL POLIDORI and ERIC	:	
KRONE,	:	
Defendants.	:	No. 03-CV-1439

MEMORANDUM AND ORDER

J. M. KELLY, J.

MAY , 2003

Presently before the Court is a Motion for Leave to Serve the Summons and Complaint upon Defendant Michael Polidori ("Polidori") by Publication filed by Plaintiffs Cheryl Long and Bobby Long ("Plaintiffs"). On March 6, 2003, Plaintiffs filed a claim against Defendants Polidori and Eric Krone for personal injuries sustained by Plaintiff Cheryl Long as a result of a motor vehicle collision. Since March 12, 2003, Plaintiffs have made several unsuccessful attempts to locate Polidori. Pursuant to Pennsylvania Rule of Civil Procedure 430(a), Plaintiffs claim that the only way to effectuate service upon Polidori is by publication of the suit in two periodicals issued in Bucks County, Pennsylvania. For the following reasons, Plaintiff's Motion for Leave to Serve by Publication is **DENIED**.

Pursuant to Federal Rule of Civil Procedure 4(e), "service upon an individual from whom a waiver has not been obtained and filed . . . may be effected in any judicial district of the United States . . . pursuant to the law of the state in which the

district court is located" Fed. R. Civ. P. 4(e).

Pennsylvania Rule of Civil Procedure 430(a) provides that a plaintiff may move for a special court order for service of process by publication if service cannot be made by ordinary means. Pa. R. Civ. P. 430(a); Gray v. Power, No. Civ. A. 94-5076, 1996 U.S. Dist. LEXIS 658, at *7 (E.D. Pa., Jan. 17, 1996).

A Rule 430(a) motion "shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made," and demonstrate that the plaintiff engaged in a good faith effort to locate the defendant. Pa. R. Civ. P. 430(a). A good faith effort is demonstrated by "(1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends, and employers of the defendant, and (3) examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records." Pa. R. Civ. P. 430(a) note. Even if a good faith effort is shown, the plaintiff's proposed publication must be reasonably calculated to provide the defendant with notice of the proceedings against him. Clayman v. Jung, 173 F.R.D. 138, 140 (E.D. Pa. 1997); Penn v. Raynor, No. Civ. A. 89-553, 1989 U.S. Dist. LEXIS 12549, at *10 n.3 (E.D. Pa. Oct. 18, 1989); Kittanning Coal Co. v. International Mining Co., 551 F. Supp.

834, 838 (W.D. Pa. 1982).

Plaintiffs contend that their request to serve notice by publication is warranted pursuant to Rule 430(a) because they conducted a good faith investigation and were nevertheless unable to determine Polidori's current residential address. According to the facts set forth in Plaintiffs instant motion, on March 12, 2003, Plaintiffs first attempted to serve Polidori at an address he provided them in Levittown, Pennsylvania. Plaintiffs' process server was told by Polidori's mother, who lived at that address, that her son had moved to Louisiana one year earlier. (Pls.' Ex. A.) She had not seen or heard from him since he moved and she did not know his current address. (Id.) Plaintiffs then looked in several telephone directories for Bucks County, Montgomery County, Doylestown and Philadelphia and searched four web sites for Polidori's address,¹ which yielded no results. Soon thereafter, Plaintiffs consulted an independent investigative agency. On March 27, 2003, the agency located Polidori at an address in Metairie, Louisiana. (Pls.' Ex. B.) Plaintiffs sent the Summons and Complaint to Polidori at the address the agency provided via certified mail, return receipt request; however, the materials were returned to Plaintiffs with a stamp on the envelope informing them that Polidori had moved and did not leave

¹ Plaintiffs searched internet websites www.bigyellow.com; www.switchboard.com; www.four11.com; and www.anywho.com.

a forwarding address. (Pls.' Ex. C.)

Although Plaintiffs have not pursued every method listed in the note to Rule 430(a), we find that Plaintiffs have engaged in a good faith effort to locate Polidori and agree that publication is a proper method of providing notice to the defendant. However, we cannot agree with Plaintiffs that publication in the Pennsylvania Law Reporter and the Pennsylvania Courier Times, which are located in Bucks County and circulate in the area of Polidori's last known Pennsylvania address, constitutes adequate notice. Although Polidori was present in Levittown, Pennsylvania in 2002 according to his mother, he was last located at an address in Metairie, Louisiana. Since Plaintiffs have not provided any evidence indicating that Polidori returned to Levittown, Pennsylvania, we find that publication in a Pennsylvania newspaper or journal is not reasonably calculated to provide the required notice to Polidori. Accordingly, we **ORDER** that Plaintiffs' Motion for Leave to Serve the Summons and Complaint upon Defendant Michael Polidori by Publication is **DENIED**.

BY THE COURT:

JAMES MCGIRR KELLY, J.